



DEPARTMENT OF DEFENSE

TRICARE; Proposed Rates for Reimbursing Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Parenteral and Enteral Nutrition (PEN) Items Not on the Medicare DMEPOS and PEN Fee Schedule

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice and request for comments.

SUMMARY: This notice is to advise interested parties of a Military Health System reimbursement change to certain DMEPOS and PEN items not included in Medicare's fee schedule. For these items, the Defense Health Agency (DHA) will create a TRICARE-specific fee schedule based on similar payment rules, to the extent practicable, as Medicare's DMEPOS and PEN fee schedule. A TRICARE-specific fee schedule will allow DHA to control costs, reduce beneficiary out-of-pocket expenses, discourage potential fraud and abuse, and prevent excessive TRICARE reimbursement rates when compared to state Medicaid programs and private health insurance. Under this change, TRICARE will align its reimbursement of certain DMEPOS and PEN items with similar reimbursement rules established under Medicare's DMEPOS and PEN fee schedule to the extent practicable, without incorporating any reimbursement rules associated with Medicare's Competitive Bidding Program (CBP). DHA is soliciting comments on the proposed rates (located on the DHA website below) and other alternative payment options for reimbursing DMEPOS and PEN items without Medicare pricing. The comment period will end 30 days after the publication of this notice. DHA will receive and consider comments, but will not issue responses to comments unless such comments drive a substantive change to the methodology outlined in paragraphs A through C below, in which case a new notice will be published in the Federal Register.

DATES: The comment period will end on [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This change will be effective July 1, 2021.

ADDRESSES: Defense Health Agency, TRICARE, Medical Benefits and Reimbursement Section, 16401 East Centretex Parkway, Aurora, CO 80011-9066.

FOR FURTHER INFORMATION CONTACT: Mr. Jahanbakhsh Badshah, Medical Benefits and Reimbursement Section, TRICARE, telephone (303) 676-3881. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE Managed Care Support Contractor in whose jurisdiction a claim would be filed.

SUPPLEMENTARY INFORMATION:

A. Background

Currently under TRICARE, DMEPOS and PEN items without Medicare pricing are reimbursed at the lower of the state prevailing charge or the billed charge. The state prevailing charge is calculated annually by TRICARE contractors on a statewide basis, using the 80th percentile of all qualified billed charges on actual claims paid for a given service or item, during the 12-month period ending June 30th of the previous year. This method is problematic in that it can lead to the generation of very high-fee schedule amounts without validation that these amounts are realistic and equitable relative to the cost of furnishing the item. Recent Department of Defense Office of Inspector General (DoD OIG) reports, as well as internal DHA analysis, have identified patterns of excessive billed charges for DMEPOS and PEN items. If the billed charges are abusive and excessive, this rolls into the calculation for state prevailing amounts. Setting payment rates too high creates incentives for higher volume, financially burdens beneficiaries whose cost-sharing is based on a percentage of the allowable amount, and encourages fraud and abuse.

B. Description of the TRICARE DMEPOS and PEN Fee Schedule

To control costs, reduce beneficiary out-of-pocket expenses, discourage potential fraud and abuse, and prevent excessive TRICARE reimbursement rates when compared to state Medicaid programs and private health insurance for equipment and supplies, DHA proposes to develop fee schedule amounts for certain DMEPOS and PEN items not identified on any Medicare fee

schedules. This proposal falls under the authority of Title 32 Code of Federal Regulation (CFR) 199.14(j)(4), which allows the Director, DHA, subject to the approval of the Assistant Secretary of Defense for Health Affairs, to establish an alternative reimbursement method designed to produce reasonable control over health care costs. In response to recent DoD OIG audits of TRICARE's overpayment of services and items without established fee schedule amounts, DHA will develop a fee schedule for these DMEPOS and PEN items on a statewide basis and create national ceilings and floors, utilizing a methodology similar to Medicare's fee schedule reimbursement methodology. TRICARE's fee schedule will not include Medicare's CBP rules, which would require making adjustments based on bids submitted for certain items and localities. This would be impossible to incorporate, as TRICARE does not have a bidding program.

Using Medicare's DMEPOS and PEN payment rules established under 42 CFR part 414, subparts C and D, to the extent practicable, DHA will create a TRICARE fee schedule for certain DMEPOS and PEN items without Medicare pricing. Given the similar attributes of the two programs, the statutory requirement that TRICARE reimbursement follow Medicare's methodology when practicable, and the fact that non-CBP payment rules are still used by Medicare for certain DMEPOS and PEN items, the adoption of these rules is appropriate for TRICARE reimbursement of DMEPOS and PEN items. Using a fee schedule is also consistent with the DoD OIG support of payment accuracy through the establishment of fee schedules. The resulting payment rates will be high enough to ensure beneficiary access to needed products and low enough to ensure sufficient provision of those products. DHA will also retain the flexibility to modify the payment rate for any procedure code when necessary to ensure access to care.

C. Methodology

TRICARE fee schedule rates will be established for services or items provided on or after July 1, 2021, and will be updated annually (January 1) by the same annual update factor Medicare uses to update its DMEPOS fee schedule. The update factor is based on the percentage increase in the

Consumer Price Index for all Urban Consumers for the 12-month period ending June 30 of the previous year adjusted by the change in the economy-wide productivity equal to the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity. Healthcare Common Procedure Coding System (HCPCS) codes classified as unlisted, miscellaneous, not otherwise classified (NOC), custom, deluxe, or currently on the TRICARE No Government Pay List or the Medicare DMEPOS and PEN fee schedule will not be included on the TRICARE fee schedule. Any code added to Medicare's fee schedule will also be removed from TRICARE's fee schedule. Quarterly updates will occur as necessary (April 1, July 1, and October 1) so codes may be added, removed, and have their rates modified mid-year. Unlisted, miscellaneous, and NOC codes will be defined using Medicare's HCPCS NOC Codes list published on the Centers for Medicare & Medicaid Services website at <https://www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html>. Codes will be assigned to a category (e.g. surgical dressings and certain durable medical equipment, prosthetics and orthotics, parenteral and enteral, etc.) based on long description and if the item meets TRICARE's definition of DMEPOS and PEN as defined in regulation and policy. TRICARE will establish national and statewide rates for existing and new HCPCS codes defined as a DMEPOS and PEN code. The rate in each state will be calculated by (1) Establishing base years and minimum data requirements, (2) calculating national floors and ceilings, and (3) calculating the average billed amount of claims TRICARE paid in that state during each base year, subject to minimum data requirements and national floors and ceilings. The base year will vary for each code and will be defined as the first year (no earlier than 1994) with at least enough charge data nationwide during a 12-month period beginning on July 1 and ending on June 30. Minimum data will be defined as any code for which there were at least 50 paid claims nationwide during the base year period; if there were fewer than 50 paid claims each year since 1994, then TRICARE's current reimbursement methodology will apply. Given the large number of codes and the lack of historical data, repricing based on 1986-87 levels (similar to Medicare)

is not administratively feasible for TRICARE's fee schedule. Although claims from that year are stored in DHA archives (claims are more readily available from 1994 and later), it would be difficult to extract the data and obtain proper documentation. Once the base year for a code has been established, a national ceiling and floor will be calculated using Medicare's methodology. For example, for surgical dressings and certain Durable Medical Equipment, the national ceiling will be equal to the median of all paid claims nationwide during the base period, and the national floor will be equal to 85 percent of the national ceiling. The state-wide fee schedule for states outside the continental United States (i.e., Alaska and Hawaii), as well as for United States territories and commonwealths, will not be subject to the ceilings and floors, in accordance with Medicare rules. When establishing the initial fee schedule amounts, the national floor and ceiling rates for any code cannot exceed the amount that would have been calculated using data during the 12-month period of July 1, 2019 through June 30, 2020. It is believed this will result in fee schedule amounts more reflective of reasonable charges for DMEPOS items. Therefore, the DHA is capping national floors and ceiling rates based on the most current base year period which is July 1, 2019 through June 30, 2020.

After establishing a national ceiling and floor for a given code, then the rate for the code can be calculated at the state level. To calculate a statewide rate using the average billed amount, there must be at least eight paid claims (similar to state prevailing rates under the current TRICARE methodology) for a given code within that state during the base year. States without eight paid claims will be set at the national ceiling, unless stated otherwise in the TRICARE

Reimbursement Manual or the TRICARE Policy Manual. The statewide rate must also fall within the national floor and ceiling. In states where the average billed amount of claims is lower than the national floor, then the statewide rate will be equivalent to the national floor. In states where the average billed amount of claims is higher than the national ceiling, then the statewide rate will be equivalent to the national ceiling. Rental items and equipment will be

calculated based on 10 percent of the fee schedule amount for a purchased item and used items and equipment will be calculated based on 75 percent of the fee schedule amount for a new item. There will be several deviations to the above methodology. For PEN items and items involving splints, casts, and inter-ocular lenses, the fee schedule amounts will use a national rate (i.e. there will be no national floors or ceilings and no state-to-state variation), which will be equal to the mean, or average, charges of all paid claims nationwide during the base period (updated and trended forward by Medicare's DMEPOS update factor). The base period for PEN items will use 2002 (or later) claims data, and 2013 or later claims data for splints, casts, and inter-ocular lenses. DHA may also establish fee schedule amounts using a cross-walk method to establish statewide rates for items comparable to DMEPOS items with already established rates (this method is consistent with Medicare's regulation to not pay more than a comparable item as identified in 42 CFR 405.502). For items removed from Medicare's fee schedule, DHA will use the last known Medicare fee schedule rate and trend it forward to the present using Medicare's annual DMEPOS update factor.

The following table provides a summary of methodologies for establishing rates in the TRICARE Fee Schedule:

Current Methodology	Category	Methodology
<p>Use the 80th percentile of all qualified billed charges within the state as the state prevailing rate.</p> <p>Pay the claim using the state prevailing rate or</p>	Surgical Dressings and Certain DME	<p>Set national ceiling at median of all paid claims nationwide during base year.</p> <p>Set national floor at 85% of national ceiling.</p> <p>Calculate average billed charge for a state during base year.</p> <p>Trend forward the base year state average, floor, and ceiling using Medicare's update factor.</p> <p>-If state average is within the national floor and ceiling, it becomes the state rate.</p>
	Prosthetics and Orthotics, including Therapeutic Shoes and Inserts	<p>Set national ceiling and floor at 90% and 120% respectively of the nationwide average of claims paid during base year.</p> <p>Calculate average billed charge for a state during base year.</p> <p>Trend forward the base year state average, floor, and ceiling using Medicare's update factor.</p>

billed charges, whichever is lower.		-If state average is within the national floor and ceiling, it becomes the state rate.
	Parenteral and Enteral Splints, Casts, and IOLs	Calculate average billed charge nationwide during base year and trend forward using Medicare's update factor. The national average becomes the state rate for every state (i.e. no variation between states)
	Codes that require use of cross-walk method	Use the same rate as a comparable code with an existing rate.
	Codes removed from Medicare's fee schedule	Use the last rate from on Medicare's fee schedule and trend it upwards using Medicare's update factor.
	Codes with fewer than 50 paid claims nationally each year since 1994	There is an insufficient number of national claims to establish a ceiling and floor. Use current methodology for reimbursement, and code will not be added to the fee schedule.

DHA will be responsible for establishing and updating and the accurate calculation of TRICARE's DMEPOS and PEN fee schedule prices. Proposed statewide rates are available for review on the DHA website at <https://health.mil/Military-Health-Topics/Business-Support/Rates-and-Reimbursement/Durable-Medical-Equipment-Prosthetics-Orthotics-and-Supplies>.

Dated: December 22, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.

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